

ORDINANCE NO. 2006-5

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE
VILLAGE OF BISCAYNE PARK, FLORIDA, RECOGNIZING
THE VILLAGE'S MUNICIPAL HOME RULE POWERS
PURSUANT TO SECTION 166.021, FLORIDA STATUTES;
EXPRESSLY RECOGNIZING AND PROVIDING THAT IF THE
CURRENT CHARTER IS FOUND VOID BY ANY PROCEEDING,
THAT ALL PROVISIONS OF THE PREVIOUS CHARTER OF
THE MUNICIPALITY, INCLUDING BUT NOT LIMITED TO ANY
LIMITATIONS ON BORROWING, ARE NULLIFIED AND
REPEALED; PROVIDING FOR SEVERABILITY; PROVIDING
FOR INCLUSION; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, on June 6, 2006, the citizens of the Village of Biscayne Park, Florida approved the adoption of a new Charter and the repealing of the Village's previous Charter which was adopted in 1933; and

WHEREAS, subsequent to the Village residents exercising their rights to approve the new Charter at a special election, a lawsuit was filed against the Village of Biscayne Park seeking to have the election invalidated and being void as a matter of law; and

WHEREAS, the Complaint alleges that the ballot was misleading and that it failed to disclose the chief purpose of the measure which is alleged in the Complaint to be the changing of borrowing rights in the Village Charter; and

WHEREAS, despite attempts to expedite the resolution of this lawsuit, the final hearing on this matter has been continued several times; and

WHEREAS, as a result of those extensions, the ninety day time period between the Charter being adopted and the Charter taking effect has passed; and

WHEREAS, the new Charter took effect on September 4, 2006; and

WHEREAS, as a result, on September 4, 2006, a Village Interim Manager was hired and the government of the Village has officially been changed; and

WHEREAS, Section 166.021(4), Florida Statutes provides that, other than certain exceptions, " any other limitation of power upon any municipality contained in any

municipal charter enacted or adopted prior to July 1, 1973 is hereby nullified and repealed;" and

WHEREAS, in order to ensure that the Home Rule powers of the Village are not hindered by the current or any future lawsuits, that the authority of the Commission is not frustrated and, consistent with Section 166.021(4), Florida Statutes, which nullify charters adopted prior to 1973 that limit the power of municipalities, the Village Commission of the Village of Biscayne Park recognizes and provides that any repeal of the existing Charter would not allow for any provisions of the old Charter to govern to the extent that they limit the power of a municipality and are expressly nullified and repealed pursuant to law and Village Commission legislative authority, including any limitations on the Village's ability to borrow,; and

WHEREAS, the Village Commission finds that this Ordinance is in the best interests of its citizens and prevents uncertainty and disruption in the Village's ability to run its government; now, therefore

BE IT ORDAINED BY THE VILLAGE OF BISCAYNE PARK, FLORIDA:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. That the Village Commission recognizes and provides that all provisions of the 1933 Charter, or any other Charter adopted prior to July 1, 1973, which in any way limit the authority of the municipality, including limitations on borrowing, are nullified and repealed pursuant to Florida Statutes and Village action.

Section 3. Severability

The provisions of this Ordinance are declared to be severable and if any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, Ordinance 2006-5

and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

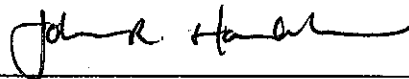
Section 4. Codification. It is the intention of the Village Commission of the Village of Biscayne Park, that the provisions of this Ordinance shall become and made a part of the Code of Ordinances of the Village of Biscayne Park, Florida, and that the Sections of this Ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or other word or phrase in order to accomplish such intention.

Section 5. Effective Date

This Ordinance shall become effective immediately upon its passage and adoption.

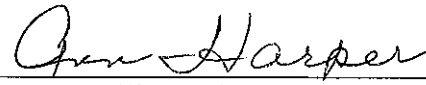
The foregoing Ordinance was offered by Commissioner Walker, who moved its adoption. The motion was seconded by Commissioner Anderson and upon being put to a vote, the vote was as follows:

The foregoing ordinance upon being put to a vote, the vote was as follows:



Mayor Hornbuckle

Mayor Hornbuckle: yes
Vice Mayor Morris: yes
Commissioner Walker: yes
Commissioner Mallette: yes
Commissioner Anderson: yes

Attest:


Ann Harper, Village Clerk

Approved as to form:

First reading – September 12, 2006
Second reading – September 25, 2006



John J. Hearn, Village Attorney